

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, :
Plaintiff :
vs. : CRIMINAL NO. 1:CR-00-50-02
: :
KENNETH O. SIMMONS, JR., :
Defendant :

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Defendant Kenneth Simmons has filed a letter (doc. 285) which we will construe as a motion for extension of time to file a notice of appeal pursuant to Federal Rule of Appellate Procedure 4(b)(4). Simmons wishes to appeal our Order denying his motion for reduction of sentence, issued on April 25, 2008. (doc. 284). Simmons explains that he has been placed in solitary confinement and has "no access [sic] to typewriters, pens or copies." (doc. 285). We will grant the motion and direct the Clerk of Court to file Simmons' notice of appeal.

A motion for reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2) is a continuation of criminal proceedings against a defendant and is subject to the ten-day period for filing a notice of appeal. *United States v. Benanti*, No. 05-1965, 137 Fed. Appx.

479, 480 (3d Cir. 2005) (citing Fed. R. App. P. 4(b)(1)(A)).

Thus, Simmons had until May 9, 2008, to appeal our April 25, 2008, Order denying the motion. See Fed. R. App. P. 26(a) (exclusions for day of the event and intermediate weekends). Simmons failed to do so.

We find, however, that Simmons has demonstrated good cause for extending the time to file a notice of appeal. Therefore, Rule of Appellate Procedure 4(b)(4) allows us to extend Simmons' deadline up to thirty days beyond May 9, 2008. We will extend the deadline until May 19, 2008, and direct the Clerk of Court to enter the notice of appeal prior to this deadline.

AND NOW, this 15th day of May, 2008, upon consideration of the motion for extension of time to file a notice of appeal filed by Kenneth Simmons (doc. 285), it is ordered that:

1. The motion (doc. 285) is granted;
2. Pursuant to Federal Rule of Appellate Procedure 4(b)(4), the deadline for filing a notice of appeal is extended until May 19, 2008;
3. The Clerk of Court is directed to prepare and file, on behalf of Defendant Kenneth Simmons, a notice of appeal to the United States Court of Appeals for the Third Circuit specifying Simmons' appeal of this Court's April 25, 2008, Order (doc. 284);

4. Once filed, the Clerk of Court is also directed to mail a copy of the notice of appeal to Kenneth Simmons.

/s/William W. Caldwell
William W. Caldwell
United States District Judge